

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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A. C., and H. C., by their Next Friend  
BARBARA WEINER, individually and on behalf of  
all others similarly situated,

Plaintiffs,

**05 Civ. 2986 (TPG)**

-against-

JOHN MATTINGLY, in his official capacity as  
Commissioner of the New York City Administration  
for Children's Services, and JOHN JOHNSON, in his  
official capacity as Commissioner of the New York  
State Office of Children and Family Services,

**STATE DEFENDANT'S  
NOTICE OF MOTION  
TO DISMISS  
A.C. AND H.C. COMPLAINT**

Defendants.

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PLEASE TAKE NOTICE that, upon the document denominated "Amended Class Action Complaint" ("A.C. and H.C. Complaint") dated June 17, 2005, and upon the accompanying Memorandum of Law dated July 18, 2005, defendant JOHN JOHNSON, as Commissioner of the New York State OFFICE OF CHILDREN AND FAMILY SERVICES ("State defendant"), by his attorney, ELIOT SPITZER, Attorney General of the State of New York, shall move before the Honorable THOMAS P. GRIESA, a Judge of this Court, at the United States Courthouse, 500 Pearl Street, New York, New York, on a date to be determined by the Court, for an order and judgment dismissing the A.C. and H.C. Complaint against him: (1) pursuant to Article III of the Constitution of the United States and Federal Rule of Civil Procedure ("F. R. Civ. P.") Rule 12(b)(1), because A.C. and H.C. lack standing to assert the claims made in the A.C. and H.C. Complaint; (2) as provided in F. R. Civ. P. Rule 12(b)(6), because A.C. and H.C. have not demonstrated a violation of their alleged Constitutional rights in the removal process; and (3) pursuant to the Eleventh Amendment to the Constitution of the United States and F. R. Civ. P.

12(b)(1), to the extent damages are sought against the State defendant, for lack of subject matter jurisdiction.

PLEASE TAKE FURTHER NOTICE THAT, pursuant to Local Civil Rule 6.1(b)(2), any opposing affidavits and answering memoranda shall be served within ten business days after service of this moving paper.

Dated: New York, New York  
July 18, 2005

Respectfully submitted,

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Attorney for State defendant

By: S/  
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